



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-133; NRC-2014-0225]

Pacific Gas and Electric Company, Humboldt Bay Power Plant, Unit 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption from certain emergency planning requirements in response to an August 14, 2012, request from the Pacific Gas and Electric Company.

ADDRESSES: Please refer to Docket ID NRC-2014-0225 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2014-0225. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this document.

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I. BACKGROUND

On July 2, 1976, Humboldt Bay Power Plant (HBPP) Unit 3 was shut down for annual refueling and to conduct seismic modifications. The unit was never restarted. In 1983, updated economic analyses indicated that restarting Unit 3 would probably not be cost-effective, and in June 1983, Pacific Gas and Electric Company (PG&E) announced its intention to decommission the unit. On July 16, 1985, the U.S. Nuclear Regulatory Commission (NRC or Commission) issued Amendment No. 19 to the HBPP Unit 3 Operating License to change the status to possess-but-not-operate. (ADAMS Accession No. 8507260045). In December of 2008, the transfer of spent fuel from the fuel storage pool to the dry-cask Independent Spent Fuel Storage Installation (ISFSI) was completed, and the decontamination and dismantlement phase of HBPP Unit 3 decommissioning commenced. Active decommissioning is currently underway.

II. REQUEST/ACTION

Section 50.47, "Emergency Plans," of Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR Part 50) provides in part, "...no initial operating license for a nuclear power reactor will be issued unless a finding is made by the NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency." Appendix E, "Emergency Planning and Preparedness for Production and Utilization Facilities," to 10 CFR Part 50 provides in part, "This appendix establishes minimum requirements for emergency plans for use in attaining an acceptable state of emergency preparedness."

On November 23, 2011, the NRC issued a Final Rule modifying or adding emergency planning (EP) requirements in Section 50.47, Section 50.54, and Appendix E of 10 CFR Part 50 (76 FR 72560). The EP Final Rule was effective on December 23, 2011, with specific implementation dates for each of the rule changes, varying from the effective date of the Final Rule through December 31, 2015.

The EP Final Rule codified certain voluntary protective measures contained in NRC Bulletin 2005-02, "Emergency Preparedness and Response Actions for Security-Based Events," and generically applicable requirements similar to those previously imposed by NRC Order EA-02-026, "Order for Interim Safeguards and Security Compensatory Measures," dated February 25, 2002. In addition, the EP Final Rule amended other licensee emergency plan requirements to: (1) enhance the ability of licensees in preparing and in taking certain protective actions in the event of a radiological emergency; (2) address, in part, security issues identified after the terrorist events of September 11, 2001; (3) clarify regulations to effect consistent emergency plan implementation among licensees; and (4) modify certain EP requirements to be more effective and efficient. However, the EP Final Rule was only an

enhancement to the NRC's regulations and was not necessary for adequate protection. On page 72563 of the *Federal Register* notice for the EP Final Rule, the Commission "determined that the existing regulatory structure ensures adequate protection of public health and safety and common defense and security."

By letter dated August 14, 2012, (ADAMS Accession No. ML12236A327) PG&E submitted a, "Request for Exemption from Specific 10 CFR 50 Requirements Regarding Enhancements to Emergency Preparedness Regulations," requesting exemption from specific emergency planning requirements of 10 CFR 50.47 and Appendix E to 10 CFR Part 50 for the HBPP ISFSI.

III. DISCUSSION

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

The NRC staff reviewed the licensee's request and determined that exemptions were previously granted or should be granted from the following requirements: the requirement: "*arrangements to accommodate State and local staff at the licensee's Emergency Operations Facility have been made*" of 10 CFR 50.47(b)(3); the requirement: "*and State and local response plans call for reliance on information provided by facility licensees for determinations of minimum initial offsite response measures*" of 10 CFR 50.47(b)(4); the requirement of 10 CFR 50.47(b)(10); the requirement: "*and onsite protective actions during hostile action*" of 10 CFR Part 50, Appendix E, Section IV.1; the requirement of 10 CFR Part 50, Appendix E, Section IV.2; the requirement of 10 CFR Part 50, Appendix E, Section IV.3; the requirement of

10 CFR Part 50, Appendix E, Section IV.4; the requirement of 10 CFR Part 50, Appendix E, Section IV.5; the requirement of 10 CFR Part 50, Appendix E, Section IV.6; the requirement: *"By June 23, 2014," "a description of the," and "including hostile action at the site. For purposes of this appendix, "hostile action" is defined as an act directed toward a nuclear power plant or its personnel that include the use of violent force to destroy equipment, take hostages, and/or intimidate the licensee to achieve an end. This includes attack by air, land, or water using guns, explosives, projectiles, vehicles, or other devices used to deliver destructive force"* of 10 CFR Part 50, Appendix E, Section IV.A.7; the requirement of 10 CFR Part 50, Appendix E, Section IV.A.9; the requirements: *"and outside, and offsite, and, By June 20, 2012, for nuclear power reactor licensees, these action levels must include hostile action that may adversely affect the nuclear power plant"* of 10 CFR Part 50, Appendix E, Section IV.B.1; the requirements: *By June 20, 2012," "within 15 minutes" and "to protect public health and safety provided that any delay in declaration does not deny the State and local authorities the opportunity to implement measures necessary to protect the public health and safety"* of 10 CFR Part 50, Appendix E, Section IV.C.2; the requirement: *"within 15 minutes" and "The licensee shall demonstrate that the appropriate governmental authorities have the capability to make a public alerting and notification decision promptly on being informed by the licensee of an emergency condition. Prior to initial operation greater than 5 percent of rated thermal power of the first reactor at the site, each nuclear power reactor licensee shall demonstrate that administrative and physical means have been established for alerting and providing prompt instructions to the public with the plume exposure pathway EPZ. The design objective of the prompt public alert and notification system shall be to have the capability to essentially complete the initial alerting and notification of the public within the plume exposure pathway EPZ within about 15 minutes. The use of this alerting and notification capability will range from immediate alerting and notification*

of the public (within 15 minutes of the time that State and local officials are notified that a situation exists requiring urgent action) to the more likely events where there is substantial time available for the appropriate governmental authorities to make a judgment whether or not to activate the public alert and notification system. The alerting and notification capability shall additionally include administrative and physical means for a backup method of public alerting and notification capable of being used in the event the primary method of alerting and notification is unavailable during an emergency to alert or notify all or portions of the plume exposure pathway EPZ population. The backup method shall have the capability to alert and notify the public within the plume exposure pathway EPZ, but does not need to meet the 15 minute design objective for the primary prompt public alert and notification system. When there is a decision to activate the alert and notification system, the appropriate governmental authorities will determine whether to activate the entire alert and notification system simultaneously or in a graduated or staged manner. The responsibility for activating such a public alert and notification system shall remain with the appropriate governmental authorities" of 10 CFR Part 50, Appendix E, Section IV.D.3; the requirement: *"onsite technical support center and an emergency operations"* of 10 CFR Part 50, Appendix E, Section IV.E.8.a.(i); the requirement of 10 CFR Part 50, Appendix E, Section IV.E.8.a.(ii); the requirement of 10 CFR Part 50, Appendix E, Section IV.E.8.b; the requirement of 10 CFR Part 50, Appendix E, Section IV.E.8.c; the requirement of 10 CFR Part 50, Appendix E, Section IV.E.8.d; the requirement of 10 CFR Part 50, Appendix E, Section IV.E.8.e, the requirement of 10 CFR Part 50, Appendix E, Section IV.F.2.a; the requirement: *"Nuclear power reactor licensees shall submit exercise scenarios under § 50.4 at least 60 days before use in an exercise required by this paragraph 2.b"* and *"and offsite"* and *"(Technical Support Center (TSC), Operations Support Center (OSC), and the Emergency Operations Facility (EOF))"* of 10 CFR Part 50, Appendix E, Section

IV.F.2.b; the requirement: “*Such scenarios for nuclear power reactor licensees must include a wide spectrum of radiological releases and events, including hostile action*” of 10 CFR Part 50, Appendix E, Section IV.F.2.i; and the requirement of 10 CFR Part 50, Appendix E, Section IV.I.

The exemption request was reviewed against the acceptance criteria included in 10 CFR 50.47, Appendix E to 10 CFR Part 50, 10 CFR 72.32 and Interim Staff Guidance – 16. The review considered the permanently shut-down and defueled status of the reactor, and the low likelihood of any credible accident resulting in radiological releases requiring offsite protective measures. These evaluations were supported by the previously documented licensee and staff accident analyses. The staff concludes that the Humboldt Bay Site Emergency Plan provides: (1) an adequate basis for an acceptable state of emergency preparedness, and (2) in conjunction with arrangements made with offsite response agencies, provides reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the Humboldt Bay Site.

The Commission has concluded that the licensee’s request for an exemption from certain requirements of 10 CFR 50.47(b) and 10 CFR Part 50, Appendix E, Section IV as specified above are acceptable in view of the greatly reduced offsite radiological consequences associated with the current plant status as permanently shut-down and spent nuclear fuel is stored in an ISFSI.

The NRC has determined that other requirements from which PG&E requested exemptions were not applicable to the HBPP and ISFSI or are being met by the Humboldt Bay Site Emergency Plan or an exemption was not appropriate. Therefore, an exemption was not necessary or was denied for those requirements. Additional information regarding the NRC staff evaluation is documented in a Safety Evaluation Report (ADAMS Accession No. ML13016A210).

A. Exemption Is Authorized by Law

The NRC has found that PG&E meets the criteria for an exemption in § 50.12. The NRC has determined that granting the exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

B. The Exemption Presents No Undue Risk to Public Health and Safety Is Consistent With the Common Defense and Security

As noted in Section II., "REQUEST / ACTION," above, PG&E's compliance with the EP requirements in effect before the effective date of the EP Final Rule demonstrated reasonable assurance of adequate protection of the public health and safety and common defense and security. In the Safety Evaluation Report, the NRC staff explains that PG&E's implementation of the Humboldt Bay Site Emergency Plan, with the exemptions, will continue to provide this reasonable assurance of adequate protection. Thus, granting the exemptions will not present an undue risk to public health or safety and is not inconsistent with the common defense and security.

C. Special Circumstances Are Present

For the Commission to grant an exemption, special circumstances must exist. Under § 50.12(a)(2)(ii), special circumstances are present when "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule." These special circumstances exist here. The NRC has determined that PG&E's compliance with the regulations listed above is not necessary for the licensee to demonstrate that, under its emergency plan, there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency. Consequently, special circumstances are present because requiring PG&E to

comply with the regulations listed above is not necessary to achieve the underlying purpose of the EP regulations.

D. Environmental Considerations

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact related to this exemption was published in the *Federal Register* on October 24, 2014 (79 FR 63647). Based upon the environmental assessment, the Commission has determined that issuance of this exemption will not have a significant effect on the quality of the human environment.

IV. CONCLUSION

The NRC staff reviewed the licensee's submittals and concludes that the licensee's request for an exemption from certain requirements of 10 CFR 50.47(b) and Appendix E to 10 CFR Part 50 as specified above is acceptable in view of the greatly reduced offsite radiological consequences associated with the current plant status as permanently shut down and spent nuclear fuel is stored in an ISFSI.

The Commission has determined that, pursuant to 10 CFR 50.12, the exemptions are authorized by law, will not present an undue risk to the public health and safety, are consistent with the common defense and security, and special circumstances are present.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 5th day of November, 2014.

For the Nuclear Regulatory Commission.

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Division of Decommissioning, Uranium Recovery
and Waste Programs,
Office of Nuclear Material Safety
and Safeguards.

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